No. 02-0656

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In The

Supreme Court of the United States

BRENDA FRANKLIN AND ROBERT FRANKLIN,

Petitioners,

v.

FREDDIE CHAPMAN,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of the Rules of the United States Supreme Court, the undersigned counsel for the Respondent certifies that the following is a full and complete list of all trial judges, attorneys, persons, associations of persons, firms, partnerships or corporations that have an interest in the outcome of this case and appeal, including subsidiaries, conglomerates, affiliates, and parent corporations, including any publicly held company, and other indefinable legal entities related to a party:

- Association County Commissioners of Georgia-
  Interlocal Risk Management Agency
  Self-Insurance Pool
  Insurer for Respondent
- John Michael Brown
  Counsel for Petitioner
- Brenda Franklin
  Petitioner
- Robert Franklin
  Petitioner
- G. Kevin Morris
  Counsel for Respondent
- Hon. William C. O'Kelley
  Judge, United States District Court for the
  Northern District of Georgia
- Terry E. Williams
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TABLE OF CONTENTS

	Page
CORPORATE DISCLOSURE STATEMENT	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
COUNTER STATEMENT OF THE CASE	1
REASONS FOR DENYING THE WRIT	2
I. THERE IS NO CONFLICT AMONG COURTS INVOLVING QUALIFIED IMMUNITY AND THE REASONABLY WELL-TRAINED OFFICER ANALYSIS	3
II. PETITIONER'S RELIANCE UPON *THORNTON* IS MISPLACED AND OFFERS NO GUIDANCE TO THE INSTANT MATTER	6
CONCLUSION	9

TABLE OF AUTHORITIES

Page

CASES

Anderson v. Creighton, 483 U.S. 635, 107 S.Ct. 3034, 97 L.Ed.2d 523 (1987) 4

Eubanks v. Gerwin, 40 F.3d 1157 (11th Cir. 1994) 5

Lee v. Ferraro, 284 F.3d 1188 (11th Cir. 2002) 4

Montoute v. Carr, 114 F.3d 181 (11th Cir. 1997) 4

Scarbrough v. Myles, 245 F.3d 1299 (11th Cir. 2001) 4

Thornton v. City of Macon, 132 F.3d 1395 (11th Cir. 1998) 6, 7, 8

Von Stein v. Brescher, 904 F.2d 572 (11th Cir. 1990) 4

COUNTER STATEMENT OF THE CASE

On September 28, 1998, Ms. Bobbie Lee Burns entered the Habersham County Sheriff's Department and reported her daughter missing. She alleged that four (4) year-old Haley Burns had been taken from the child's babysitter by Mr. Robert Franklin. Ms. Burns emphatically added that she never gave Robert Franklin, the child's grandfather, permission to take the child.

Given Ms. Burns' apparent distress, Sheriff Ronnie James summarized Ms. Burns' allegations to Deputy Freddie Chapman and asked him to call upon the Franklin residence to investigate the whereabouts of missing Haley Burns and Robert Franklin. As instructed, Deputy Chapman traveled to the Franklin home, and upon arrival, he approached the front door and knocked. After several minutes without an answer, Deputy Chapman knocked again, and Ms. Brenda Franklin, the missing child's stepgrandmother, opened the door.

Incredibly, Ms. Franklin launched into a barrage of unintelligible remarks littered with obscenities. Without having had the opportunity to explain the purpose of his visit, Ms. Franklin slammed the door shut on the deputy. Once again, Deputy Chapman knocked on the door, and Ms. Franklin opened it. Thereupon, Ms. Franklin, standing in the open doorway to her home, returned to cussing the officer as he repeatedly attempted to explain why he was there.

Bewildered by Ms. Franklin's unprovoked belligerence and still uncertain as to whether the missing child was within the residence, Deputy Chapman instructed Ms. Franklin to step out onto the porch. Ms. Franklin refused. Deputy Chapman repeated his order several more times to

Ms. Franklin – "step out on the porch." Then, fully aware that Deputy Chapman was going to arrest her if she did not comply with his instruction, Ms. Franklin turned her back on the deputy and retreated into her home.

At this point, because of Ms. Franklin's suspicious response to the news that her step-granddaughter was missing and because Deputy Chapman needed to further investigate whether the child might be hidden in the Franklin home, Deputy Chapman chose to pursue Ms. Franklin and arrest her for obstruction of justice. Clearly aware of Deputy Chapman's intent to place her into custody, Ms. Franklin chose to flee further inside her home from the deputy and resist his arrest. Consequently, Ms. Franklin began to hyperventilate, and Deputy Chapman immediately radioed for an ambulance. After being treated and released from the Habersham County Medical Center, Ms. Franklin was taken to the Habersham County Sheriff's Department and processed.

REASONS FOR DENYING THE WRIT

The sole question presented by the Petition is whether the Eleventh Circuit's arguable probable cause analysis impermissibly shifts the objective component of qualified immunity analysis to a subjective inquiry. Petitioners argue that the Eleventh Circuit's arguable probable cause analysis of qualified immunity effectively "requires the officer's version of the facts to be accepted as true, even when disputed." Pet. at 9. The Petition further suggests that the application of arguable probable cause analysis has led to "diverging and contradictory doctrines" among the circuits. Pet. at 6. However, the Eleventh Circuit's

"arguable probable cause" analysis does not lead to the result suggested by Petitioners; the Eleventh Circuit's "arguable probable cause" analysis in the this case, as well as all those cited by the Petitioners, remains an objective inquiry.

The District Court and Eleventh Circuit both used an objective analysis and their conclusions were proper in all respects. Moreover, the Petitioners have failed to demonstrate any real conflict among the circuits. Thus, Respondent respectfully urges this Honorable Court to deny the Petition for Writ of Certiorari.

I. THERE IS NO CONFLICT AMONG COURTS INVOLVING QUALIFIED IMMUNITY AND THE REASONABLY WELL-TRAINED OFFICER ANALYSIS

This Petition should be denied because there is no conflict among the circuits involving qualified immunity and the reasonably well-trained officer analysis. Petitioners argue that the Eleventh Circuit is in conflict with other jurisdictions because the "arguable probable cause" analysis improperly relies upon the subjective impressions of an officer, whereas other circuits rely on those "facts that [are] grounded in reality." Pet. at 7. Petitioners further argue that the Eleventh Circuit's "arguable probable cause" should be rejected by this Court because it "requires that the officer's version of the facts to be accepted as true," even where disputed. *Id.*

Petitioners' argument, however, is flawed because there is absolutely no evidence that Eleventh Circuit precedent employs anything other than an objective analysis. For example, in a seminal "arguable probable

cause" case for the Eleventh Circuit, the court held that, "[a]ctual probable cause is not necessary for an arrest to be objectively reasonable. Indeed, 'it is inevitable that law enforcement officials will in some cases reasonably but mistakenly conclude that probable cause is present, and . . . in such cases those officials . . . should not be held personally liable.'" *Von Stein v. Brescher*, 904 F.2d 572, 579 (11th Cir. 1990) (citing *Anderson v. Creighton*, 483 U.S. 635, 640, 107 S.Ct. 3034, 3039, 97 L.Ed.2d 523 (1987)). The court added that, "[t]he standard is an objective one, and therefore does not include an inquiry into the officers' subjective intent or beliefs." *Id.* (citation omitted).

This same standard pervades more recent decisions as well. For instance, in *Montoute v. Carr*, 114 F.3d 181, 184 (11th Cir. 1997), the Eleventh Circuit held that "an officer need not have actual probable cause but only 'arguable probable cause,' i.e., the facts and circumstances must be such that the officer reasonably could have believed that probable cause existed." And, most recently in *Lee v. Ferraro*, the Eleventh Circuit reiterated the standard to be used in Fourth Amendment false arrest cases, noting that "[a]rguable probable cause exists 'where reasonable officers in the same circumstances and possessing the same knowledge as the Defendant[ ] could have believed that probable cause existed to arrest.'" *Lee v. Ferraro,* 284 F.3d 1188 (11th Cir. 2002) (quoting *Scarbrough v. Myles*, 245 F.3d 1299, 1302 (11th Cir. 2001)).

Importantly, despite Petitioners' interpretation of the precedent, the listed cases demonstrate that there is no divergence among the circuits. That is to say, the Eleventh Circuit, like those circuits relied upon in Petitioners' brief, use an objective standard to evaluate qualified immunity as applied to Fourth Amendment false arrest claims.

Indeed, Petitioner attempts to obscure this fact by focusing on the "arguable probable cause" language, but such attempt bears no affect on the analysis. Pet. at 8 (arguing that numerous other jurisdictions have utilized the "'reasonably well-trained officer' standard without the additional analysis of what is 'arguable probable cause'"). This is because "[a]rguable probable cause exists 'where reasonable officers in the same circumstances and possessing the same knowledge as the Defendant[ ] could have believed that probable cause existed to arrest.'" *Id.* In other words, Petitioners attempt to muddle the issue fails because the "arguable probable cause" analysis is tantamount to determining whether reasonable officers, in the same or similar circumstances, could have believed that probable cause existed for the arrest. *Eubanks v. Gerwin*, 40 F.3d 1157, 1160 (11th Cir. 1994) (holding that the standard for arguable probable cause is "whether a reasonable officer . . . *could* have reasonably believed that probable cause existed. . . . ").

As applied by the Eleventh Circuit and District Court to the case *sub judice*, there is no evidence that either court deviated from an objective analysis. For instance, Judge O'Kelley held that, in light of the facts admitted by the Petitioner, "Deputy Chapman had arguable probable cause" to arrest Ms. Franklin. Pet. at 26a. Notably, this conclusion was not based upon the version of facts presented by the Respondent, but rather was based upon facts that the Petitioner admitted. "Mrs. Franklin admits that she knew Deputy Chapman was there pursuant to Sheriff James' earlier call regarding Haley Burns and Mr. Franklin. She admits that she repeatedly refused the deputy's requests to step out on the porch and that she

retreated into the house despite said requests." *Id.* Accordingly, the District Court held "that Deputy Chapman had arguable probable cause, that is he reasonably could have believed that probable cause existed, to conclude that Mrs. Franklin had actual knowledge that Deputy Chapman was investigating the missing child matter and she willfully hindered that investigation thereby committing misdemeanor obstruction of justice." Pet. at 26a.

Likewise, the Eleventh Circuit noted that "Chapman is entitled to qualified immunity 'if a reasonable officer could have believed [the suspect's] arrest to be lawful, in light of the clearly established law and the information the arresting officer possessed.'" Pet. at 4a (citation omitted). And, relying on this analysis, it concluded that the circumstances established at least arguable probable cause for the Petitioner's arrest. Pet. at 4a-5a.

Therefore, because the arguable probable cause standard is not in conflict with other circuits and because the District Court and Eleventh Circuit properly applied same, this case does not present a compelling reason to grant certiorari.

II. PETITIONER'S RELIANCE UPON *THORNTON* IS MISPLACED AND OFFERS NO GUIDANCE TO THE INSTANT MATTER

Sections II and III of Petitioners' brief seemingly argue that the Eleventh Circuit erred because Respondent had 'fair notice' that his conduct was unlawful by virtue of its holding in *Thornton v. City of Macon*, 132 F.3d 1395, 1397-98 (11th Cir. 1998). In that case, a police officer was summoned to an apartment complex to assist a woman in returning a set of keys to her former roommate in

exchange for her mattress that was still inside the apartment. *Id.* Agreeing to assist the woman, the officer approached the apartment with the keys. *Id.* However, as he got close to the door, Thornton, the woman's former roommate, told the officer he had done nothing wrong and ordered the officer to leave. *Id.* The officer then decided to call for back-up and continued his efforts to coax Mr. Thornton outside. *Id.* Thornton eventually agreed to open the door to receive the keys, but when he did, "the officers charged into the apartment" and placed him under arrest for obstruction of a law enforcement officer. *Id.* Thornton subsequently filed suit against the officers.

Citing this Court's recent holding in *Hope v. Pelzer*, ___ U.S. ___, 122 S.Ct. 2508, 1531 L.Ed.2d 666 (2002), Petitioners suggest that the *Thornton* decision provided 'fair notice' to Deputy Chapman that his actions were unlawful. Notably though, Petitioners' reliance on this case is misplaced because the facts of *Thornton* involved a civil dispute, not a criminal investigation. The court, in rejecting the defendant officers' qualified immunity defense, held that they acted outside of their official duties and lawful authority by attempting to "forcibly . . . resolve a *civil* dispute." *Id.* (emphasis added). In other words, although the officers were authorized to "mediate and defuse a contentious situation," they clearly did not have the legal authority to force a resolution to the dispute between former roommates, and consequently, absent the authority to forcibly resolve a civil dispute over keys, the defendants were precluded from the shield of qualified immunity. *Id.* Simply stated, the officers in *Thornton* could not meet the first prong of the qualified immunity analysis; were the officers acting within the scope of their discretionary authority?

In this case, it is undisputed that the Respondent was acting within his discretionary authority by investigating a reported criminal act: "Questioning possible witnesses and/or suspects is common in law enforcement." Pet. at 3a. Accordingly, because the facts of *Thornton* are distinguishable and because the court concluded that the officers were not acting within their authority by forcibly resolving a civil dispute, the Petitioners' reliance thereon is inapposite. That is to say, because *Thornton* involved a completely different set of circumstances, it is nonsensical for Petitioners to suggest that qualified immunity should be denied when Deputy Chapman was clearly acting within his discretionary authority. And, more importantly, because the facts and circumstances of *Thornton* are not analogous to those herein, it is equally obvious that such case does not demonstrate that the law was clearly established.

Consequently, because neither the facts nor circumstances of *Thornton* are in any way similar to those of the instant matter, thereby eviscerating Petitioners' 'fair notice' argument, there is no compelling reason for this Court to grant the petition.

CONCLUSION

For the within and foregoing reasons, the Respondent prays that this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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